

Message

From: Mugdan.Walter@epamail.epa.gov [Mugdan.Walter@epamail.epa.gov]
Sent: 12/12/2010 7:02:10 PM
To: Woolford.James@epamail.epa.gov
BCC: Mugdan.Walter@epamail.epa.gov
Subject: Re: Fw: Re: Update from GE Discussion on Dec. 12 AM

Ex. 5 Deliberative Process (DP)

From: James Woolford/DC/USEPA/US
To: Mathy Stanislaus/DC/USEPA/US@EPA, "Lisa Feldt" <Feldt.Lisa@epamail.epa.gov>, "Barry Breen" <Breen.Barry@epamail.epa.gov>, "Elizabeth Southerland" <Southerland.Elizabeth@epamail.epa.gov>
Date: 12/12/2010 01:19 PM
Subject: Fw: Re: Update from GE Discussion on Dec. 12 AM

Confidential/Deliberative

Mathy - Lisa, etc. al.

Ex. 5 Deliberative Process (DP)

-----Forwarded by James Woolford/DC/USEPA/US on 12/12/2010 01:00PM -----

To: Walter Mugdan/R2/USEPA/US@EPA, Judith Enck/R2/USEPA/US@EPA, Lisa Feldt/DC/USEPA/US@EPA, James Woolford/DC/USEPA/US@EPA, Elizabeth Southerland/DC/USEPA/US@EPA, Catherine McCabe/DC/USEPA/US@EPA, Elliott Gilberg/DC/USEPA/US@EPA, "Brian Donohue" <BDonohue@ENRD.USDOJ.GOV>, "Peter Kautsky" <PKautsky@ENRD.USDOJ.GOV>, "George Pavlou" <Pavlou.George@epa.gov>, Doug Garbarini/R2/USEPA/US@EPA, "David King" <king.david@epa.gov>, "Eric Schaaf" <schaaf.eric@epa.gov>, "Paul Simon" <simon.paul@epa.gov>, Seth

Oster/DC/USEPA/US@EPA, Brendan Gilfillan/DC/USEPA/US@EPA
From: Bob Sussman/DC/USEPA/US
Date: 12/12/2010 12:57PM
Subject: Re: Update from GE Discussion on Dec. 12 AM

Ex. 5 Deliberative Process (DP)

From: Walter Mugdan

Sent: 12/12/2010 12:55 PM EST

To: Judith Enck; Bob Sussman; Lisa Feldt; James Woolford; Elizabeth Southerland; Catherine McCabe; Elliott Gilberg; "Brian Donohue" <BDonohue@ENRD.USDOJ.GOV>; "Peter Kautsky" <PKautsky@ENRD.USDOJ.GOV>; "George Pavlou" <Pavlou.George@epa.gov>; Doug Garbarini; "David King" <king.david@epa.gov>; "Eric Schaaf" <schaaf.eric@epa.gov>; "Paul Simon" <simon.paul@epa.gov>; Seth Oster; Brendan Gilfillan

Subject: Re: Update from GE Discussion on Dec. 12 AM

Right.

Sent by EPA Wireless E-Mail Services

From: Judith Enck

Sent: 12/12/2010 11:27 AM EST

To: Walter Mugdan; Bob Sussman; Lisa Feldt; James Woolford; Elizabeth Southerland; Catherine McCabe; Elliott Gilberg; "Brian Donohue" <BDonohue@ENRD.USDOJ.GOV>; "Peter Kautsky" <PKautsky@ENRD.USDOJ.GOV>; "George Pavlou" <Pavlou.George@epa.gov>; Doug Garbarini; "David King" <king.david@epa.gov>; "Eric Schaaf" <schaaf.eric@epa.gov>; "Paul Simon" <simon.paul@epa.gov>; Seth Oster; Brendan Gilfillan

Subject: Re: Update from GE Discussion on Dec. 12 AM

So it will clearly be in writing and will be included in any agreement and any order. Right?

Sent by EPA Wireless E-Mail Services

From: Walter Mugdan

Sent: 12/12/2010 11:19 AM EST

To: Judith Enck; Bob Sussman; Lisa Feldt; James Woolford; Elizabeth Southerland; Catherine McCabe; Elliott Gilberg; "Brian Donohue" <BDonohue@ENRD.USDOJ.GOV>; "Peter Kautsky" <PKautsky@ENRD.USDOJ.GOV>; "George Pavlou" <Pavlou.George@epa.gov>; Doug Garbarini; "David King" <king.david@epa.gov>; "Eric Schaaf" <schaaf.eric@epa.gov>; "Paul Simon" <simon.paul@epa.gov>; Seth Oster; Brendan Gilfillan

Subject: Re: Update from GE Discussion on Dec. 12 AM

GE has not and will not "agree" to perpetual O&M. However, GE understands that is our unalterable position, and GE hasn't raised it since October 28.

Sent by EPA Wireless E-Mail Services

From: Judith Enck

Sent: 12/12/2010 10:50 AM EST

To: Bob Sussman; Walter Mugdan; Lisa Feldt; James Woolford; Elizabeth Southerland; Catherine McCabe; Elliott Gilberg; "BDonohue" <BDonohue@ENRD.USDOJ.GOV>; "PKautsky" <PKautsky@ENRD.USDOJ.GOV>; "Pavlou George" <Pavlou.George@epa.gov>; Doug Garbarini; "king david" <king.david@epa.gov>; "schaaf eric" <schaaf.eric@epa.gov>; "simon paul" <simon.paul@epa.gov>; Seth Oster; Brendan Gilfillan

Subject: Re: Update from GE Discussion on Dec. 12 AM

did ge agree to o and m in perpetuity?

Ex. 5 Deliberative Process (DP)

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Sent by EPA Wireless E-Mail Services

From: Bob Sussman

Sent: 12/12/2010 10:33 AM EST

To: Walter Mugdan; Lisa Feldt; James Woolford; Elizabeth Southerland; Catherine McCabe; Elliott Gilberg; "BDonohue" <BDonohue@ENRD.USDOJ.GOV>; "PKautsky" <PKautsky@ENRD.USDOJ.GOV>; Judith Enck; "Pavlou George" <Pavlou.George@epa.gov>; Doug Garbarini; "king david" <king.david@epa.gov>; "schaaf eric" <schaaf.eric@epa.gov>; "simon paul" <simon.paul@epa.gov>; Seth Oster; Brendan Gilfillan
Subject: Re: Update from GE Discussion on Dec. 12 AM

Very consistent with my discussion with Brackett. (See my e-mail). Since I am talking to him again later, further feedback from your team on the difference in methodology would be helpful.

Ex. 5 Deliberative Process (DP)

From: Walter Mugdan

Sent: 12/12/2010 10:09 AM EST

To: Bob Sussman; Lisa Feldt; James Woolford; Elizabeth Southerland; Catherine McCabe; Elliott Gilberg; BDonohue@ENRD.USDOJ.GOV; PKautsky@ENRD.USDOJ.GOV; Judith Enck; Pavlou.George@epa.gov; Doug Garbarini; king.david@epa.gov; schaaf.eric@epa.gov; simon.paul@epa.gov
Subject: Update from GE Discussion on Dec. 12 AM

We just got off a call with GE.

We understand now why and how GE came up with such a different number for "acres capped in Non-Bedrock/Clay areas" from the one we came up.

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On the fundamental question about the values of X and Y, I had yesterday posed essentially question to GE: "Which of the following two possibilities do you dislike less -- 10/4 or 11/3?"

Ann today did not answer the question in the way I had posed it. Instead, she said she understood that the value of Y is particularly important to the State, Trustees and NGOs, and she confirmed that GE is particularly concerned about the value of X. She therefore proposed 12/3 -- that is, X = 12% of 440 acres, and Y = 3% of 440 acres.

[NOTE: Ann asserted that getting any lower than 3% for Y is extremely doubtful.]

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On other issues, we are very close on resuspension; we communicated a revised EPA position which is very close to GE's proposal. GE will get back to us later today in response.

Ann raised again the Dispute Resolution issue that we have discussed internally. I made it clear to her that IF we agree to remove the clause from the Consent Decree which currently denies GE dispute resolution for changes the Engineering Performance Standards (EPS) -- because it was believed they would never change again after NOW -- we will NOT provide for dispute resolution of any decision by EPA about raising or not raising the capping Metric of Success. That is, if GE asks for the value of X or Y to increase, and EPA either says "no" or agrees to an increase that is less than what GE asked for, then GE would NOT have dispute resolution for that EPA decision. Ann did not argue back to me that this

limitation is unfair or otherwise problematical. (I'm sure she doesn't like it, but she didn't argue the point.)

- Walter